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SUBJECT: Martinelli's Wish is Supreme Court's Command: Attorney
General Suspended

REF: 09 PANAMA 756; 10 PANAMA 29

CLASSIFIED BY: Stephenson, Ambassador; REASON: 1.4(B), (D)

Summary

¶1. (C) Panama's Supreme Court has voted 5-4 to temporarily suspend Attorney General Ana Matilde Gomez pending trial on a charge of abuse of authority. Removing Gomez became feasible only after President Martinelli appointed two new justices to the court last month who were widely viewed as personally beholden to the President (Ref A). The move has been expected for some time (Ref B) but was executed with surprising swiftness during a four-day span while Martinelli and top cabinet officials were out of the country. A constitutional debate over who has the authority to name Gomez's interim replacement - Gomez or the executive branch - has arisen and is serving as a proxy for the larger conflict between Martinelli's quest for control of the government versus the development of robust democratic institutions in Panama. Both the Attorney General and the President have nominated separate replacements. Despite the GOP's attempts to distance Martinelli from the court's decision, his immediate proposal of a replacement has prompted questions about his role in the ouster of the AG. Press coverage has been very negative, and civil society is again protesting what it sees as an attack on democracy by the executive branch. End Summary.

It's Not What You Know, It's Who You Know

¶2. (C) Notionally, the court's suspension of Gomez is temporary. However, it appears unlikely that she will retain her post for the remaining five years of her ten-year term, regardless of the merits of the case against her. Ex-Supreme Court Justice Edgardo Mola stated in the daily Panama America that "Everything seems to indicate that we are facing a political verdict by the Supreme Court...this smells final to me." Despite the fact that abuse of authority is not a felony - which is the constitutional threshold

allowing the court to remove a sitting Attorney General - the court ordered her suspended by a 5-4 margin. The five justices voting in favor of suspension were a combination of appointees from the Mireya Moscoso administration (her Panamenista Party is now in the governing coalition) and two of Martinelli's new picks, Alejandro Moncada and Wilfredo Saenz, who was acting in his capacity as an auxiliary justice in place of the recused justice Jose Abel Almengor (Ref A). The four dissenting justices were opposition PRD appointees. Three of the opposition votes were abstentions, meaning that the court must wait one week to formalize its decision.

13. (C) The two votes from Moncada and Saenz were critical, as the justices they recently replaced, Esmerelda De Troitino and Adan Arjona, were considered by post to be the most ethical and competent justices on the court. Of the suspension, Troitino commented in daily La Prensa that " I did not expect this decision. A petition for separation from the post (of AG) should have a foundation in law and in justice, elements that involve a certainty that a crime was committed. I don't see what the judicial argument is that the Attorney General has committed a crime. This is the chronicle of a death foretold. The truth is, I am glad I'm no longer there. Twisting the law...it's a shame."

Out of Touch in Davos - and at Home

14. (C) In addition to the suspension, the court ordered Gomez not to leave the country, again unusual for a non-felony case. Meanwhile, many top officials of the Martinelli administration were abroad when the decision was announced: President Martinelli and Vice President/Foreign Minister Juan Carlos Varela were in Switzerland attending the World Economic Forum, while Minister of Economy and Finance Alberto Vallarino and Minister of Commerce Roberto Henriquez were elsewhere in Europe on official business. Minister of the Presidency Demetrio "Jimmy" Papadimitriu was "Acting President".

15. (C) The absence of cabinet ministers became an issue when the focus shifted to the debate about Gonzalez's interim replacement. Immediately after her suspension, Gomez named auxiliary prosecutor Luis Martinez as acting Attorney General. At the same time that she was announcing that Martinez was taking over, the presidency released a statement naming Giuseppe Bonissi as the replacement AG. The press has jumped on the executive branch's move, questioning how the cabinet named Bonissi when they were not able to meet to discuss the choice, as is required by the constitution. Papadimitriu scrambled to justify the odd timing and method of Bonissi's selection, acknowledging that the cabinet had not met but that President Martinelli had designated Bonissi "from abroad". The full cabinet is to take the issue up when they meet Tuesday, February 2nd.

16. (C) Should the cabinet sanction the choice of Bonissi, however, they must still submit his name to the National Assembly for approval on two separate occasions, once in committee and once before the plenary session. This would theoretically have to be accomplished in four days, before Gomez's suspension becomes official. Further casting doubt on the actions of the executive, notes La Prensa, is their use of the term "suplente" or auxiliary, to describe Bonissi. This term was removed from the constitution in the reforms of 2004, leaving unclear what role the President's office expected Bonissi to fill.

Constitution a Proxy for Wider Battle

¶7. (C) The constitutionality of the inner workings of the cabinet have received less attention than the controversy surrounding what some call conflicting passages in the document itself. According to Article 224, the Attorney General has the authority to name an interim replacement, while article 200 says that the cabinet and President have the right to name the (presumably permanent) Attorney General. Constitutional scholar Carlos Pedrischi declared that there is no conflict in the constitution and that the choice is Gomez's to make. Pedrischi reasons that the section of the constitution that allows the AG to name a temporary replacement specifically addresses the situation in which the country now finds itself. The president of the Panamanian bar association concurred with Pedrischi's assessment, noting that the board of directors of the bar would be issuing their opinion on the matter.

¶8. (C) The constitutional struggle to name a successor serves as proxy for the larger battle; in effect, focusing on the constitutionality of a seemingly minor point allows the press to sound the alarm about the systemic threat to Panamanian democracy

in the only way they currently can while still reporting straight facts. The editorial pages have been more explicit in denouncing what has been seen as a concerted campaign by Martinelli to undermine independent institutions, including the Controller General, the Supreme Court and now the Attorney General. The appointment of the two new justices, Almengor and Moncada (Ref A) was seen as key, as the court has the power to legitimize any actions by the executive as he focuses the machinery of the state on other institutions and political opponents.

Opposition Pipes Up

¶9. (C) The opposition PRD stirred to life to comment on the crisis, with Balbina Herrera, loser to Martinelli in the presidential election last year, describing Martinelli in a radio interview as a "Chavez of the right". Martinelli's predecessor, Martin Torrijos, said that "when politics becomes judicial, then justice ends up politicized, and society and democracy lose in the conjunction." Even Martinelli advisor Jose Blandon Sr. voiced disapproval, saying "Today's judgment reflects a politicization of justice....this is the beginning of the end of institutions in this country". Partido Popular president Milton Henriquez, brother of the commerce minister, told Poloffs the day before the firing that he thought Gomez would survive her travails. When he was proven wrong the next day, he said that the suspension "reaffirms the perception that the judicial branch is manipulated by outside powers that want to take control of the Attorney General's office."

¶10. (C) Referring to the fragility of the Panamanian state, Former Ambassador to the U.S. Federico Humbert Arias said in an editorial in the leading daily La Prensa titled 'Where is Panama?' that "the storm we see coming, as a result of the hammer with which the executive has attacked the judiciary -causing serious fissures - is worrying." Humbert went on to question what he characterized as the absence of civil society and the main opposition party, the PRD, as well as a lack of associates and friends near to the president willing to speak out. He singled out Minister of Government and Justice Jose Raul Mulino in particular, as one who fought "man to man" against the military dictatorship in the 1980's.

¶11. (C) Civil society has not been able to effectively counter Martinelli and in general seems reluctant to act, or resigned to accept, the gradual erosion of independent institutions. However, Polcouns was informed by prominent civilista Aurelio Barria that there will be large demonstration February 3rd. "You will be

surprised by how many people will come" to a demonstration planned to take place in front of the Attorney General's office, according to Barria. (Comment: We do not predict a large turn-out, as we believe Martinelli's reputation of punishing people by going after their core economic interests - cancelling government contracts, sending MEF auditors to their businesses, etc. - is an effective deterrent.)

¶12. (C) Gomez was relatively popular with the public but does not enjoy an unblemished reputation and her effectiveness has been widely questioned among civil society, even by longtime supporters like professor and journalist Miguel Antonio Bernal, her former mentor. Bernal told Polcouns that Gomez should be replaced for her failings and there were many legitimate reasons to remove her, but

that this was not the right way, and that removing her now was counterproductive in building Panamanian institutions. Nonetheless, she has become a symbol of institutions under siege, and has hinted that she may take her case to international fora such as the Inter-American Court of Human Rights.

Comment

¶13. (C) Leading editorials have argued that Martinelli's actions show he doesn't understand the basic tenets of democracy. They express real concern that Martinelli is running the campaign to remove Gomez as part of his goal to eliminate any independent person or institution capable of checking his power. It now appears as though he really believed the he could simply name Bonissi as the new AG, without anyone noticing or caring.

¶14. (C) The costs to Panama of such actions are not likely to be confined to institutional or constitutional problems. With the deterioration of Panama's judicial independence and a lack of ability to enforce contracts, Panama's business and investment climate will suffer. We have seen in other countries in the region how deteriorating faith in democratic institutions has given rise to populist leaders who work to further erode those institutions as checks and balances. We will coordinate closely with WHA on appropriate ways to signal USG support for strong democratic institutions. As a modest first step, we propose declining an invitation for an embassy officer to speak at an upcoming conference aimed at increasing American investment in Panama - and explaining to the GOP why we are not currently able to champion Panama as a great place to invest.
STEPHENSON